

JOSE ANTONIO BARRERAS.

JANUARY 17, 1910.—Ordered to be printed.

Mr. PRINCE, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 6330.]

The Committee on Claims, having had under consideration the bill (H. R. 6330) for the relief of Jose Antonio Barreras, for loss of property by Navajo Indians, November, 1865.

The purpose of this bill is to refer the claim to the Court of Claims, and give it jurisdiction to investigate and try said claim under the provision of the Tucker Act, approved March 3, 1887, irrespective of the Indian depredation act of March 3, 1891.

Upon careful consideration the committee finds that these claims are barred by reason of the fact that they were not presented within apt time under statutes providing for the payment of such claims out of the funds of the Indian tribes or under the act of March 3, 1891.

The committee also finds that when a similar case was referred to the Court of Claims it was held that the court had no jurisdiction under the Indian depredation act and dismissed the case, and also because the evidence was not sufficient to establish the facts. (See *Vincent v. The United States*, 39 Cls. R., 456.)

The committee therefore recommends that the bill do not pass.

Appended hereto is a letter from the Department of Justice, which is made a part of this report.

DEPARTMENT OF JUSTICE,
Washington, May 4, 1908.

SIR: I am in receipt, through the Secretary of the Interior, of copies of the House bills enumerated below, with a request that your committee be furnished with facts and information concerning the matters involved and also an opinion touching the merits of the claims:

- H. R. 18130. For the relief of Jose Antonio Barreras, to authorize the payment of a claim amounting to \$15,750, on account of property alleged to have been stolen or destroyed by Navajo Indians during the month of November, 1865.
- H. R. 18131. For the relief of Rayes Salas, authorizing the payment of a claim amounting to \$600 for property destroyed or stolen by Apache Indians in the months of November, 1862, and June, 1870 or 1871.

- H. R. 18132. For the relief of Pedro Salazar y Garcia, authorizing the payment of a claim amounting to \$325 for property stolen or destroyed by Navajo Indians during the month of March, 1864.
- H. R. 18553. For the relief of Walter Barbee, authorizing the payment of a claim amounting to \$450 for property stolen or destroyed by Comanche Indians during the month of May, 1868 or 1869.
- H. R. 18554. For the relief of Tennessee J. Spiller, authorizing the payment of a claim amounting to \$10,000 for property stolen or destroyed by Kiowa and Comanche Indians during the month of April, 1874.
- H. R. 18555. For the relief of William F. McGee, authorizing the payment of a claim amounting to \$300 for property stolen or destroyed by Comanche Indians during the month of April, 1874.
- H. R. 18556. For the relief of Thomas H. Holcomb, authorizing the payment of a claim amounting to \$350 for property stolen or destroyed by Comanche Indians during the month of June, 1863.
- H. R. 18557. For the relief of Seletha J. Powers, widow, and the heirs of John Powers, deceased, authorizing the payment of a claim amounting to \$1,500 for property stolen or destroyed by Tonkaway Indians during the fall of 1862.
- H. R. 18558. For the relief of Thomas C. Capell, authorizing the payment of a claim amounting to \$424 for property stolen or destroyed by Comanche Indians during the month of February, 1862.
- H. R. 18559. For the relief of the heirs of M. O. Coker, deceased, authorizing the payment of a claim amounting to \$405 for property stolen or destroyed by Comanche Indians during the month of July, 1860; and
- H. R. 18904. For the relief of Felipe de Jesus Cantee, authorizing the payment of a claim amounting to \$450 for property stolen or destroyed by Navajo Indians during the month of October, 1866.

In all of the above-mentioned bills it is proposed that the Court of Claims be given jurisdiction to investigate and try these cases under the provisions of the Tucker Act, approved March 3, 1887, irrespective of the Indian depredation act of March 3, 1891.

All the claims referred to appear to have originated in depredations upon the property of the claimants by Indians. There were upon the statute books of the United States at the time of the commission of these depredations statutes providing for the payment of such claims out of the funds of the Indian tribes, under certain restrictions, and provided the claims were filed within three years before the proper tribunal. By the act of March 3, 1891 (26 Stat. L., 851), the Court of Claims was invested with jurisdiction to try such cases; and it was there provided that all claims not filed in the Court of Claims within three years after the passage of that act should be forever barred.

It appears that the claims represented in these bills originated at various times from 1860 to 1874. I am informed by the Secretary of the Interior that no claim was ever filed in his office by any of the proposed beneficiaries during the time while jurisdiction over such claims was in his department. It appears also that none of the claims referred to were filed in the Court of Claims during the three years provided by the jurisdictional act cited above.

These claims are therefore doubly barred; and it is a question for serious consideration, where a tribunal is provided and the presentation of claims invited, and the claimant fails to present his claim while the event is recent and the evidence available, although warned to do so under penalty of being barred by the statute, whether further extraordinary relief should be extended in such a stale claim.

The passage of these bills would, in fact, be a discrimination in favor of the stale claim. Not in every instance is the Indian tribe required to pay for property taken or destroyed by its members. Where the taking was an incident of an Indian war; where the claimant was not a citizen of the United States; where the claimant was a trespasser upon the Indian lands; or where he gave just cause and provocation to the Indians; or, after the depredation, sought private satisfaction and revenge, the law denies him compensation. But the purport of these bills is to give the Court of Claims jurisdiction to investigate and report upon the facts of the depredation only, irrespective of the defenses which might be interposed under the general statutes relating to Indian depredations. No reason is apparent for thus discriminating in favor of these dilatory claimants, nor for relieving them from the consequences of their own negligence in failing to present their claims in time, and in my opinion the reference proposed is unwise and the bills should not pass.

Aside from these considerations, which go directly to the merits of the proposal, it is not believed that the Court of Claims would have jurisdiction under the Tucker Act if the bills were passed. The Tucker Act provides only for the consideration of claims against the United States, while these claims are primarily against Indian

tribes, the United States being liable only as guarantors in certain cases where the funds of the tribe are insufficient or where the tribe can not be identified. In a similar case referred under the same statute in 1903, the court held that the terms of the Tucker Act did not apply and that the court was without jurisdiction to investigate and report the facts under the resolution (*Vincent v. The United States*, 39 C. Cls. R., 456). The claim in the Vincent case had been filed in the Court of Claims under the Indian depredation act and dismissed because the evidence was not sufficient to establish the facts. The claimant in that case was therefore not chargeable with laches in failing to present his claim, as are the beneficiaries of the bills under consideration. In other respects these claims are not distinguishable from the claim in the Vincent case, and the court would undoubtedly be unable to entertain jurisdiction.

Respectfully,

CHARLES J. BONAPARTE,
Attorney-General.

Hon. J. M. MILLER,
House of Representatives.

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